



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard
Program

Rulemaking 04-04-026
(Filed April 22, 2004)

**INDEPENDENT ENERGY PRODUCERS ASSOCIATION'S COMMENTS ON
PETITION FOR MODIFICATION OF D.04-06-014 OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
REGARDING STANDARD TERMS AND CONDITIONS REQUIRED FOR
RENEWABLES PORTFOLIO STANDARD CONTRACTS**

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February 28, 2007

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California Renewables Portfolio Standard
Program

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In the captioned, joint Petition for Modification, PG&E and SCE argue that the “non-modifiable” nature of previously approved “standard terms” applicable to RPS contracts has proved to be a hindrance, rather than efficacious, in attracting and concluding new RPS contracts. IEP agrees.

As recited in the Petition, in 2004, the Commission adopted standard terms and conditions for Renewables Portfolio Standard (“RPS”) contracts, stating that these terms were intended to “develop a ‘year one’ contract to enable the RPS solicitation to move forward,” with the “expect[ation] that the contract language will become more refined as the parties and the Commission gain further experience.”¹ The process for updating standard terms and conditions to reflect that experience, which should take place through the review and approval of annual RPS plans, requires clarification.

The Assigned Commissioner and Administrative Law Judge, when establishing the framework for the first RPS contracts, also recognized that experience might support revisiting

¹ Decision (“D.”) 04-06-014 (June 2004) at 6; See also “Joint Ruling of Assigned Commissioner and Administrative Law Judge Regarding Procedure for Adoption of Standard Terms and Conditions” (R.01-10-024, March 2004) at 2 (the “Joint Ruling”) stating the same. (Link: <http://www.cpuc.ca.gov/Published/Rulings/34636.htm>)

the determination that some terms and conditions should not be subject to negotiation.²

Apparently, the restriction on negotiations of those provisions has proven to hinder, not help, progress towards RPS goals, slowing negotiations and reducing the appeal of the California marketplace to RPS development.

PG&E and SCE also point out, as would be expected, that the problems associated with inflexibility in negotiation of certain terms are issues that have become apparent and developed over time, through experience with the RPS contract negotiation and approval process as well as the continual evolution of the RPS program, RPS technology, and the commercial and legal environment in which RPS contracts are executed.

IEP also agrees that attainment of the RPS goals will require the efficient, focused and streamlined efforts of RPS-obligated entities, RPS developers, and the Commission and that changes should be identified and made that will result in more RPS contract success. IEP approves of the recommendations of PG&E and SCE that the Commission provide the following clarifications and modifications to D.04-06-014:

1. The Commission should clarify that RPS-obligated entities may propose changes in the standard terms and conditions as part of their Annual RPS Plans;
2. The Commission should lift all current restrictions on negotiation of designated standard terms and conditions.

IEP further submits that the obstacles and inefficiencies associated with the current inflexibility in the process are exacerbated by ongoing and likely prospective regulatory events. In Decision 07-02-011, for example, the standard definition of Environmental Attributes (now called Green Attributes) is stretched and expanded to even greater complexity than already exists

² Joint Ruling at 6.

and therefore invites inconsistency that can only impair and impede conclusion of RPS contracts.³ The promise of further adjustments like this through time reinforces the call by PG&E and SCE for flexibility or, better in IEP's view, the abandonment of standardization altogether.

If the Commission concludes and is determined to maintain standardization based on the requirements of SB 1078, for example, then it should direct parties to develop business terms related to "green attributes" (i.e. "standard terms and conditions") that are mutually acceptable. Furthermore, the Commission should direct parties to submit such terms and conditions for the Commission's consideration and approval. The real-world, business experience of the parties, employed in this manner, will help minimize the probability that the resultant standard language serves as a barrier to development and investment.

In conclusion and in order of recommended actions, IEP submits that the Commission should:

1. Abandon the reliance on standard terms to the extent it has leave to do so.
2. Failing that, clarify that standard terms, as suggested by PG&E and SCE, are in the nature of guidelines that may be negotiated by the parties to create the most sensible fit of bargains and benefits in consideration of the parties' positions and abilities.
3. If rigid, pre-approved "standard terms and conditions" are required related to "green attributes" (and IEP is doubtful that this is the case), then the Commission should allow the parties to develop mutually agreeable business terms and conditions, subject to

³ See Decision 07-02-011 at 40 *et seq.*

Commission review and approval, the language of which will reflect the interests and needs of both parties in a business, contractual context.

Respectfully submitted,

Dated: February 28, 2007

/s/

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Certificate of Service

I hereby certify that I have this day served a copy of “Independent Energy Producers Association’s Comments On Petition For Modification Of D.04-06-014 Of Pacific Gas And Electric Company (U 39 E) And Southern California Edison Company (U 338-E) Regarding Standard Terms And Conditions Required For Renewables Portfolio Standard Contracts” on all known parties to R.04-04-026 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on February 28, 2007 at Sacramento, California

/s/

Eric Janssen

R.04-04-026
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February 28, 2007

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